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Attorneys for Defendant
Medtronic, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFFREY SPICER,

Plaintiff,

vs.

MEDTRONIC, INC., MEDTRONIC PS
MEDICAL, INC., and Does 1 to 50,

Defendants.

No.: 3:08-CV-02789-TEH

**STIPULATION AND ~~PROPOSED~~
ORDER RE PRODUCTION OF
PRESCRIPTION DEVICE EXEMPLAR**

REED SMITH LLP

A limited liability partnership formed in the State of Delaware

Plaintiff Jeffrey Spicer ("Plaintiff") and Defendant Medtronic, Inc. ("Medtronic"), by and through their counsel of record, make the following stipulation and request for an order allowing production of a prescription device exemplar by Medtronic.

As the parties informed the Court at the most recent Scheduling Conference on February 2, 2009, the parties are engaged in some discovery and Plaintiff has requested production of a device exemplar. Specifically, Plaintiff has requested an exemplar of the tunneling tool that would be packaged in an Extension Kit Model 7482A (like the product identified in Plaintiff's complaint). Medtronic responded that it is prohibited from providing a device to Plaintiff or his counsel under federal law prohibiting distribution or sale of such prescription devices without a prescription. However, with a Court's order, Medtronic may make such exemplar available, stamped "Not for Human Use" so long as Plaintiff reimburses Medtronic for the cost of the device. Thus, the parties request an Order allowing the production as outlined above.

IT IS SO STIPULATED.

DATED: February 19, 2009

By /s/ Thomas A. Cohen
Thomas A. Cohen
Attorney for Plaintiff Jeffrey Spicer

DATED: February 19, 2009

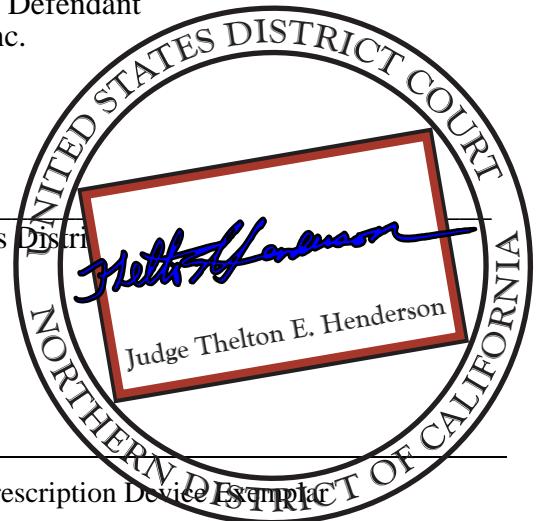
REED SMITH, LLP

By /s/ Dana A. Blanton
Ginger Heyman Pigott
Dana A. Blanton
Attorneys for Defendant
Medtronic, Inc.

IT IS SO ORDERED.

DATED: 02/23, 2009

United States District



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